

in a workweek in agriculture, he would not be exempt if such employment in agriculture were engaged in for various persons so that less than the primary portion of his workweek was performed in his employment in agriculture by such farmer. For example, an employee may work a 60-hour week and be employed in agriculture for 50 of those hours, of which 20 hours are worked in his employment by the farmer who is engaged in the livestock auction operations, the other 30 being performed for a neighboring farmer. Although this employee was primarily employed in agriculture during the workweek he is not exempt. His primary employment in agriculture was not by the farmer described in section 13(b)(13) as required.

§ 780.614 Definition of a farmer.

The Act does not define the term “farmer.” Whether an employer is a “farmer” within the meaning of section 13(b)(13) must be determined by consideration of the particular facts, keeping in mind the purpose of the exemption. A full discussion of the meaning of the term “farmer” as used in the Act’s definition of agriculture is contained in §§ 780.130 through 780.133. Generally, as indicated in that discussion, a farmer under the Act is one who engages, as an occupation, in farming operations as a distinct activity for the purpose of producing a farm crop. A corporation or a farmers’ cooperative may be a “farmer” if engaged in actual farming of the nature and extent there indicated.

§ 780.615 Raising of livestock.

Livestock auction operations are within the 13(b)(13) exemption only when they are conducted as an adjunct to the raising of livestock by the farmer. The farmer is required to engage in the raising of livestock as a prerequisite for the exemption of an employee employed in the operations described in section 13(b)(13). Engagement by the farmer in one or more of the other branches of farming will not meet this requirement.

§ 780.616 Operations included in raising livestock.

Raising livestock includes such operations as the breeding, fattening, feeding, and care of domestic animals ordinarily raised or used on farms. A fuller discussion of the meaning of raising livestock is contained in §§ 780.119 through 780.122.

§ 780.617 Adjunct livestock auction operations.

The livestock auction operations referred to in section 13(b)(13) are those engaged in by the farmer “as an adjunct” to the raising of livestock. This phrase limits the relative extent to which the farmer may conduct livestock auctions and claim exemption under section 13(b)(13). To qualify under the exemption provision, the auction operations should be an established part of the farmer’s raising of the livestock and subordinate to it. (*Hearnberger v. Gillespie*, 435 F. 2d 926 (C.A. 8).) The auction operations should not be conducted on so large a scale as to predominate over the raising of livestock. The livestock auction should be adjunct to the farmer’s raising of livestock not only when he engages in it on his own account, but also when he joins with other farmers to hold an auction.

§ 780.618 “His own account”—“in conjunction with other farmers.”

Under the terms of section 13(b)(13), the farmer may operate a livestock auction solely for his own benefit or he may join with “other farmers” to auction livestock for their mutual benefit. (See § 780.614 with regard to the definition of “farmer.”) Unless the auction is conducted by the farmer alone or with others who are “farmers” the exemption does not apply.

§ 780.619 Work “in connection with” livestock auction operations.

An employee whose agricultural employment meets the tests for exemption may engage in “other” employment “in connection with” his employer’s livestock auction operations under the conditions stated in section 13(b)(13). The work which an employee may engage in under the phrase “in connection with” includes only those